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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SILVEX DESIGNS, INC.,

Plaintiff,  
-against-

FAST FLEET SYSTEMS, INC.,  
QUEBECOR WORLD LOGISTICS, INC.  
d/b/a Q.W. EXPRESS, STATION  
OPERATOR SYSTEMS, INC., INTEGRITY  
TRANSPORT, INC., EDWARD EGAN,  
individually, NICA, INC., JIRARI CORP., and  
HICHAM JIRARI, individually,

Defendants.

Civil Action No. 07-cv-3740 (DC)(DFE)

**DEFENDANT NICA, INC.'S ANSWER  
TO THE THIRD AMENDED  
COMPLAINT, AFFIRMATIVE  
DEFENSES AND CROSS-CLAIMS**

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FAST FLEET SYSTEMS, INC.,

Third-Party Plaintiff,  
-against-

ONE BEACON INSURANCE COMPANY,  
STATION OPERATOR SYSTEMS, INC.,  
INTEGRITY TRANSPORT, INC., EDWARD  
EGAN, individually, NICA, INC., JIRARI  
CORP., and HICHAM JIRARI, individually,

Third-Party Defendants.

QUEBECOR WORLD LOGISTICS, INC.,

Third-Party Plaintiff,

-against-

STATION OPERATOR SYSTEMS, INC.,  
INTEGRITY TRANSPORT, INC., EDWARD  
EGAN, individually, HICHAM JIRARI,  
individually, JIRARI CORP., and NICA, INC.,

Third-Party Defendants.

Defendant, NICA, Inc. (“NICA”), by and through its attorneys, Mandelbaum, Salsburg, Gold, Lazris, & Discenza, P.C., answers the Third Amended Complaint of Silvex Designs, Inc. as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Answering paragraph 1 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
2. Answering paragraph 2 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
3. Answering paragraph 3 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
4. Answering paragraph 4 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
5. Answering paragraph 5 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

6. Answering paragraph 6 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

7. Answering paragraph 7 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

8. Answering paragraph 8 of the Third Amended Complaint, NICA admits that it is a corporation organized and existing by virtue of the laws of Massachusetts, but denies the remaining facts alleged. By way of further answer, NICA avers that it has an office and place of business located at 703 Granite Street, Suite 300, Braintree, Massachusetts.

9. Answering paragraph 9 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

10. Answering paragraph 10 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

#### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

11. Answering paragraph 11 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

12. Answering paragraph 12 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

13. Answering paragraph 13 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

14. Answering paragraph 14 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

15. Answering paragraph 15 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

16. Answering paragraph 16 of the Third Amended Complaint, NICA denies the facts alleged.

17. Answering paragraph 17 of the Third Amended Complaint, NICA denies the facts alleged.

18. Answering paragraph 18 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, NICA denies that it or any agent or employee of NICA had any involvement in picking up the consignment from Plaintiff's principle place of business.

19. Answering paragraph 19 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, NICA denies that it or any agent or employee of NICA had any involvement in transporting the consignment from Plaintiff's principle place of business to a location in New Jersey.

20. Answering paragraph 20 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, Defendant NICA denies that it or any agent or employee of NICA had any involvement in delivering the jewelry consignment to Newark, New Jersey.

21. Answering paragraph 21 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

**COUNT 1**

**QUEBECOR WORLD LOGISTICS. INC. d/b/a Q.W. EXPRESS**

22. Answering paragraph 22 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 21 as if set forth herein at length.

23. Answering paragraph 23 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

24. Answering paragraph 24 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged regarding other parties. By way of further answer, NICA denies ever being an agent of Defendant Q.W. Express.

25. Answering paragraph 25 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

26. Answering paragraph 26 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

27. Answering paragraph 27 of the Third Amended Complaint, NICA denies the relief requested.

28. Answering paragraph 28 of the Third Amended Complaint, NICA denies the relief requested.

29. Answering paragraph 29 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT II**

**FAST FLEET SYSTEMS, INC.**

30. Answering paragraph 30 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 29 as if set forth herein at length.

31. Answering paragraph 31 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

32. Answering paragraph 32 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, Defendant NICA denies ever being an agent of Defendant Fast Fleet.

33. Answering paragraph 33 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

34. Answering paragraph 34 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

35. Answering paragraph 35 of the Third Amended Complaint, NICA denies the relief requested.

36. Answering paragraph 36 of the Third Amended Complaint, NICA denies the relief requested.

37. Answering paragraph 37 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT III**

**STATION OPERATOR SYSTEMS, INC.**

38. Answering paragraph 38 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 37 as if set forth herein at length.

39. Answering paragraph 39 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

40. Answering paragraph 40 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, NICA denies ever being an agent, affiliate, subsidiary or employee of Defendant Station Operator Systems, Inc.

41. Answering paragraph 41 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

42. Answering paragraph 42 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

43. Answering paragraph 43 of the Third Amended Complaint, NICA denies the relief requested.

44. Answering paragraph 44 of the Third Amended Complaint, NICA denies the relief requested.

45. Answering paragraph 45 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT IV**

**INTEGRITY TRANSPORT, INC.**

46. Answering paragraph 46 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 45 as if set forth herein at length.

47. The allegation in Paragraph 47 does not involve this answering Defendant. Therefore, Defendant denies this allegation.

48. Answering paragraph 48 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, NICA is not an agent, affiliate, subsidiary or employee of Defendant Integrity Transport, Inc.

49. Answering paragraph 49 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

50. Answering paragraph 50 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

51. Answering paragraph 51 of the Third Amended Complaint, NICA denies the relief requested.

52. Answering paragraph 52 of the Third Amended Complaint, NICA denies the relief requested.

53. Answering paragraph 53 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT V**

**EDWARD EGAN**

54. Answering paragraph 54 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 53 as if set forth herein at length.

55. Answering paragraph 55 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

56. Answering paragraph 56 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged. By way of further answer, NICA denies ever being an agent or employee of Defendant Edward Egan.

57. Answering paragraph 57 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

58. Answering paragraph 58 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

59. Answering paragraph 59 of the Third Amended Complaint, NICA denies the relief requested.

60. Answering paragraph 60 of the Third Amended Complaint, NICA denies the relief requested.

61. Answering paragraph 61 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT VI**

**NICA, INC.**

62. Answering paragraph 62 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 61 as if set forth herein at length.

63. Answering paragraph 63 of the Third Amended Complaint, NICA denies the facts alleged.

64. Answering paragraph 64 of the Third Amended Complaint, NICA denies the facts alleged. By way of further answer to paragraph 64, NICA denies that Defendants Jirari Corp and/or Mr. Jirari have ever been agents or employees of NICA.

65. Answering paragraph 65 of the Third Amended Complaint, NICA denies the facts alleged.

66. Answering paragraph 66 of the Third Amended Complaint, NICA denies the facts alleged.

67. Answering paragraph 67 of the Third Amended Complaint, NICA denies the relief requested.

68. Answering paragraph 68 of the Third Amended Complaint, NICA denies the relief requested.

69. Answering paragraph 69 of the Third Amended Complaint, NICA denies the relief requested.

70. Answering paragraph 70 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT VII**

**JIRARI CORP**

71. Answering paragraph 71 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 70 as if set forth herein at length.

72. Answering paragraph 72 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

73. Answering paragraph 73 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

74. Answering paragraph 74 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

75. Answering paragraph 75 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

76. Answering paragraph 76 of the Third Amended Complaint, NICA denies the relief requested.

77. Answering paragraph 77 of the Third Amended Complaint, NICA denies the relief requested.

78. Answering paragraph 78 of the Third Amended Complaint, NICA denies the relief requested.

79. Answering paragraph 79 of the Third Amended Complaint, NICA denies the relief requested.

**COUNT VIII**

**HACHIM JIRARI**

80. Answering paragraph 80 of the Third Amended Complaint, NICA repeats each answer in paragraphs 1 through 79 as if set forth herein at length.

81. Answering paragraph 81 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

82. Answering paragraph 82 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

83. Answering paragraph 83 of the Third Amended Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

84. Answering paragraph 84 of the Third Amended Complaint, NICA denies the relief requested.

85. Answering paragraph 85 of the Third Amended Complaint, NICA denies the relief requested.

86. Answering paragraph 86 of the Third Amended Complaint, NICA denies the relief requested.

87. Answering paragraph 87 of the Third Amended Complaint, NICA denies the relief requested.

**AFFIRMATIVE DEFENSES**

NICA hereby asserts the following Affirmative Defenses in this case:

**FIRST AFFIRMATIVE DEFENSE**

The Third Amended Complaint fails to state a claim, in whole or in part, upon which relief can be granted against NICA.

**SECOND AFFIRMATIVE DEFENSE**

Personal jurisdiction has not been properly obtained over NICA and NICA reserves its right to contest the alleged personal jurisdiction.

**THIRD AFFIRMATIVE DEFENSE**

The claims against NICA are barred because NICA is not a carrier of goods subject to the Carmack Amendment.

**FOURTH AFFIRMATIVE DEFENSE**

NICA complied with all of its contractual and other legal requirements governing its actions or omissions in this matter.

**FIFTH AFFIRMATIVE DEFENSE**

The Third Amended Complaint fails to aver facts necessary to establish that NICA breached a duty that resulted in Plaintiff sustaining damages.

**SIXTH AFFIRMATIVE DEFENSE**

There is a defect or misjoinder of parties involved in this matter.

**SEVENTH AFFIRMATIVE DEFENSE**

The Third Amended Complaint is uncertain and ambiguous.

**EIGHTH AFFIRMATIVE DEFENSE**

Any and all damages sustained by Plaintiff, if any, were proximately caused by, and were the sole responsibility of, third parties over whom NICA exercised no control or authority.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, acquiescence, laches and/or unclean hands.

**TENTH AFFIRMATIVE DEFENSE**

NICA has engaged the law office of Mandelbaum, Salsburg, Gold, Lazris & Discenza, P.C. to represent it in its defense of Plaintiff's frivolous, unfounded and unreasonable Third Amended Complaint, and NICA is thereby entitled to an award of reasonable attorney fees upon judgment in its favor.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or part, or his recovery of damages should be reduced, by its failure to take reasonable steps to avoid or minimize its alleged damages.

**TWELFTH AFFIRMATIVE DEFENSE**

NICA intends to rely upon such other and further defenses as may become available during discovery in this action and reserves its right to amend this Answer to assert any such additional affirmative defenses.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The proximate cause of Plaintiff's alleged damages, if any, was Plaintiff's own conduct and not that of NICA.

**WHEREFORE**, NICA prays that Plaintiff take nothing by way of its Third Amended Complaint, and the Court dismiss the entire action and all claims by Plaintiff against NICA with prejudice, and enter judgment for NICA against Plaintiff for NICA's reasonably incurred attorney's fees and costs, and all other relief it deems just and proper

**CROSSCLAIM FOR INDEMNIFICATION**

Without admitting liability herein by NICA, if there is any liability on the part of NICA, then it is asserted that liability was passive and secondary in nature in comparison to the liability of any named or to be named defendants, if any damages are sustained. Therefore, demand is made for a judgment of common law indemnification against all other defendants.

**WHEREFORE**, NICA demands judgment against all other defendants for indemnification for any judgment that the Plaintiff may obtain against NICA.

**CROSSCLAIM FOR CONTRIBUTION**

Without admitting liability herein by NICA, if there is any liability on the part of any other defendant named or to be named in this litigation, then it is asserted that their liability was the major contributing factor and they are jointly liable with NICA. Therefore, demand is made for judgment of contribution for all, or any part, of any sum adjudged against NICA.

**WHEREFORE**, NICA demands judgment against all other defendants for contribution for any judgment that the Plaintiff may obtain against NICA.

**DESIGNATION OF TRIAL COUNSEL**

William H. Healey, Esq. is hereby designated as trial counsel for NICA, Inc.

**MANDELBAUM, SALSBURG,  
GOLD, LAZRIS & DISCENZA, P.C.**  
Attorneys for NICA, Inc.

By: /s/ Lance N. Olitt  
LANCE N. OLITT

DATED: December 20, 2007